ITEM 10.N.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **Stephanie Shaw, Recreation Superintendent**

DATE: **March 4, 2011 (CC Meeting of 4/6/2011)**

SUBJECT: **Consider Agreement with Ventura County Star for Brochure Printing and Mail Preparation Services for the City's Quarterly Newsletter and Recreation Guide and Authorize City Manager to Execute Agreement**

BACKGROUND

The City currently issues a quarterly publication containing the City's newsletter and seasonal recreation guide. The City's agreement with Speedy Press Services, the current brochure printing and mail preparation service vendor, expired on March 31, 2011. In anticipation of the expiration of the agreement, a Request for Proposal was issued on Tuesday, January 25, 2011 for Brochure Printing and Mail Preparation Services with a submission deadline of February 11, 2011.

DISCUSSION

The City received six proposals for brochure printing and mail preparation services. Of these, the low bid was from the Ventura County Star, which now operates a commercial print division. The City Council is being asked to approve an Agreement with the Ventura County Star for brochure printing and mail preparation services, with the option to extend the Agreement for two (2) additional one (1) year periods.

FISCAL IMPACT

The City Council has previously approved funds for brochure printing as part of the adoption of the FY 2010/11 budget. As the bid from Ventura County Star is lower than the fee currently being paid for these services, the proposed action does not require any additional funding.

STAFF RECOMMENDATION

Approve an agreement with Ventura County Star and authorize the City Manager to execute agreement, subject to final language approval of City Manager and City Attorney.

Attachment A: Draft Ventura County Star Agreement

AGREEMENT BETWEEN THE CITY OF MOORPARK AND THE VENTURA COUNTY STAR FOR PRINTING SERVICES

THIS AGREEMENT made and entered into this _____ day of _____, 2011, between the CITY OF MOORPARK, a municipal corporation, hereinafter referred to as "City" and the VENTURA COUNTY STAR, a corporation, hereinafter referred to as "Contractor".

W I T N E S S E T H:

WHEREAS, City desires to print a quarterly City publication containing City newsletter and recreation information, hereafter referred to as "Publication"; and

WHEREAS, Contractor is experienced in providing such services and is able to provide the proper experience and background to carry out the duties involved; and

WHEREAS, City desires to retain Contractor for printing said Publication.

NOW, THEREFORE, it is hereby agreed by and between the parties that:

1. **Scope of Services:** City does hereby appoint Contractor in a contractual capacity to perform the services in accordance with Exhibit A, Scope of Services, attached hereto and made a part of this Agreement.

2. **Term:** The term of this Agreement shall be from the execution date of said Agreement through June 30, 2012, unless terminated sooner as provided in this Agreement. The term of this Agreement may be extended, by written mutual consent of both parties, for up to two (2) additional one-year terms through June 30, 2014.

3. **Compensation:** The fees in full compensation to Contractor for the services rendered as set forth in Exhibit A shall be exactly $5,025.00 for printing thirteen thousand (13,000) copies of a 28 + 4 page book. An additional fee of $320.00 shall be paid to Contractor for mail preparation services. Full payment to Contractor shall be made by City within thirty (30) business days of delivery of Publication to the Moorpark Post Office. No additional fees shall be paid unless additional services are authorized by City in writing. For additional services outside the Scope of Services, Contractor shall receive compensation as set forth in Exhibit A.

4. **General Conditions:** City shall not be called upon to assume any liability for the direct payment of any salary, wages, or other compensation to any person employed by Contractor performing services hereunder for the City.

A. Contractor is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, servants, or agents shall have control over the conduct of Contractor or any of the Contractor's officers, employees, or agents, except as herein set forth.

B. Photographs and original graphics and artwork submitted to Contractor for use in publication shall be for the use of the City only and may not be used for or distributed to other agencies. Photographs and original graphics and artwork are the sole property of the City.

C. Contractor agrees to comply with all federal, state, and local laws in the performance of this Agreement.

D. Contractor shall hold harmless, indemnify and defend City and its officers, employees, servants and agents (serving as independent contractors), from any claim demand, damage, liability, loss, cost, or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from misconduct, negligent acts, errors, or omissions of Contractor or any of its officers, employees or agents in the publication of this Agreement, except such damage as is caused by the sole negligence of City or any of its officers, employees, servants, or agents.

E. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense.

F. Contractor shall maintain prior to the beginning of, and for the duration of this Agreement, insurance coverage as specified in Exhibit B, attached hereto and made part of this Agreement.

G. Nothing contained in this Agreement shall be deemed, construed, or represented by City or Contractor or by any third person to create the relationship of principal or agent or of a partnership, or of a joint venture, or of any other association of any kind or nature between City and Contractor.

H. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purported to be such an amendment, signed and acknowledged by both parties hereto.

I. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that a party prepared the Agreement or caused it to be prepared.

J. No waiver of any provision of this Agreement shall be deemed, or shall constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

K. In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

L. Cases involving a dispute between City and Contractor may be decided by an arbitrator, if both sides agree in writing on the arbitrator selected, with costs proportional to the judgment of the arbitrator.

M. This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California.

N. The captions and headings of the various Articles and Paragraphs of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles and Paragraphs hereof.

O. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

P. Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered, shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
(805) 517-6305

Michael Wurtzel
Ventura County Star
550 Camarillo Center Drive
Camarillo, CA 93011
(805) 437-0325

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

5. **Termination:** This Agreement may be terminated or suspended with or without cause by City at any time with no less than five (5) business days written notice of such termination or suspension. Contractor may terminate this Agreement only by providing City with written notice no less than thirty (30) business days in advance of such termination. In the event of such termination or suspension, Contractor shall be compensated for such services up to the date of termination or suspension. Such compensation for work in progress shall be prorated as to the percentage of progress completed at the date of termination or suspension.

6. **Responsible Individual:** The individual directly responsible for Contractor's overall Publication of the contract provisions herein above set forth and to serve as principal liaison between City and Contractor shall be Michael Wurtzel. Upon mutual written agreement of the parties, another individual may be substituted in the above capacity.

7. **Authority to Execute Agreement:** The person executing this Agreement on behalf of Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf on the Contractor and has the authority to bind Contractor to the terms of this Agreement.

8. **Implementation:** City shall provide Contractor with written notice in advance of the date at which these services are to be implemented if different than the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MOORPARK	VENTURA COUNTY STAR
_____	_____
Steven Kueny City Manager	Michael Wurtzel Director, Commercial Print Sales

ATTEST:

_____

Maureen Benson
City Clerk

Exhibit A
Scope of Services
Between the City of Moorpark and
Ventura County Star

1. SCOPE OF SERVICES:

The City requires the production of a quarterly City publication. Ventura County Star shall be responsible for providing appropriate services to print the publication, prepare it for bulk mailing to Moorpark addresses, and deliver said publication to the Thousand Oaks post office for postage verification, then subsequently to the Moorpark Post Office and the Arroyo Vista Recreation Center. Services shall be completed within the following timeline: Proof completed for City review within two (2) business days of receipt of files; publication printed within seven (7) business days of notice of authorization by City to proceed with printing; mail preparation completed within two (2) business days of completion of printing. Date and time of delivery of publication to the post office shall be within five (5) business days of completion of mail preparation, as mutually agreed upon by City and Contractor.

2. CONTRACTOR WILL PROVIDE:

   a. **Printing services**. Publication shall include 4/4 gloss cover, with twenty-eight 4/4 consecutive inside pages. Paper stock shall be as follows: 100# gloss for cover, 50# bond white for inside pages. Size shall be 8.5" by 11". Number of copies to be printed shall be 13,000.
   b. **Opportunity for City to review publication**. Contractor shall submit to City color proofs to verify quality, clarity, color, size, and layout prior to printing.
   c. **Distribution services** including bulk mailing catalog break-down and bandsack preparation, as well as delivery of adequate copies to the United States Postal Service office in Thousand Oaks, California for verification and delivery of the guides to the Moorpark Post Office for mailing to all residences, post office boxes, and businesses within the 93021 and 93020 zip codes. Remaining copies shall be delivered to the Arroyo Vista Recreation Center located at 4550 Tierra Rejada Road in Moorpark. At City's discretion, City staff may pick up remaining copies from Contractor at the Thousand Oaks Post Office during the verification process.

3. CITY WILL PROVIDE:

   a. Files necessary for printing the publication, including:
      I. Cover pages (Photoshop EPS format)
      II. Inside pages (PageMaker 7.0, PC, and/or InDesign)
      III. Font files (if needed)
      IV. Digital photographs (if needed; TIFF, JPEG, and/or EPS files)
      V. Hard-copy printout of publication

VI. Postage fees shall be paid directly to the United States Postal Service by City.

VII. Files shall be submitted on compact disc. Files may also be submitted via e-mail if necessary and feasible.

b. Payment to Contractor as described in Section 3, Compensation, of this Agreement.

4. ADDITIONAL SERVICES:

Compensation for additional printing services shall be as follows:

Additional color proof: $5.00 per page

Plate Change: $60.00 per page

Additional copies of publication: $185.00 per 1,000 copies

Additional pages in publication: $465.00 per 4 pages

Other services: Contractor shall be compensated for other services as agreed upon in writing by City and Contractor.

Exhibit B
Insurance Requirements

Prior to the beginning of and throughout the duration of Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

Contractor shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less one million dollars ($1,000,000) per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than one million dollars ($1,000,000) per accident. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability for each such person.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than one million dollars ($1,000,000) per accident or disease.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size of VII.

General conditions pertaining to provision of insurance coverage by Contractor. Contractor and the City agree to the following with respect to insurance provided by Contractor:

1. Contractor agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees and agents, using standard ISO endorsement CG 2010 with an edition prior to 1992 or other endorsement form acceptable to City. Contractor also agrees to require all contractors and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right to subrogation prior to a loss. Contractor agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

3. All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other Agreement relating to the City or its operation limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Contractor's general liability policy, shall be delivered to city at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at the City's option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to the City of any cancellation of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Contractor or any subcontractor, is intended to apply

first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to the City.

10. Contractor agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Contractor, provide the same minimum insurance required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all Agreements with subcontractors and others engaged in the Work will be submitted to the City for review.

11. If Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Contractor, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

13. Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with an insurance requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.

14. Contractor will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason.

15. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.

16. The provisions of any Workers' Compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials and agents.

17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

18. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.

19. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.

20. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.

21. Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

22. City agrees to provide immediate notice to Contractor of any claim or loss against City arising out of the work performed under this Agreement. The Contractor assumes no obligation or liability by such notice unless the claim or loss falls under the terms of this Agreement's indemnification.